

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ENRIQUE HAMES-HERRERA,

Petitioner,

vs.

IMMIGRATION AND NATURALIZATION  
SERVICE,

Respondent.

NO. 22685

APPELLANT'S REPLY BRIEF

APPEARANCES:

GRIFFIN & GRIFFIN  
RICHARD T. GRIFFIN, Esq.  
301 East Colorado Boulevard  
Suite 502  
Pasadena, California  
(213) 684-2810

Attorneys for Petitioner

FILED

JUL 28 1968

WM. B. LUCK, CLERK



1 UNITED STATES COURT OF APPEALS

2 FOR THE NINTH CIRCUIT

3  
4  
5 ENRIQUE HAMES-HERRERA, )

6 Petitioner, )

7 vs. )

NO. 22685

8 IMMIGRATION AND NATURALIZATION )  
9 SERVICE, )

10 Respondent. )  
11  
12  
13  
14

15 APPELLANT'S REPLY BRIEF

16  
17  
18  
19  
20 APPEARANCES:

21 GRIFFIN & GRIFFIN  
22 RICHARD T. GRIFFIN, Esq.  
23 301 East Colorado Boulevard  
24 Suite 502  
Pasadena, California  
(213) 684-2810

25 Attorneys for Petitioner  
26



TOPICAL INDEX

Page

TABLE OF AUTHORITIES CITED . . . . .	ii
ARGUMENT . . . . .	1
CONCLUSION . . . . .	4



## TABLE OF AUTHORITIES CITED

## CASES:

Page

Pignatello vs. Attorney General of the  
United States (1965), 350 F.2d 719.

3

Rassano vs. Immigration and Naturalization  
Service (1967) 377 F.2d

2





1 UNITED STATES COURT OF APPEALS  
2 FOR THE NINTH CIRCUIT  
3  
4

5 ENRIQUE HAMES-HERRERA, )

6 Petitioner, )

7 vs. )

APPELLANT'S REPLY

8 IMMIGRATION AND NATURALIZATION )  
9 SERVICE, )

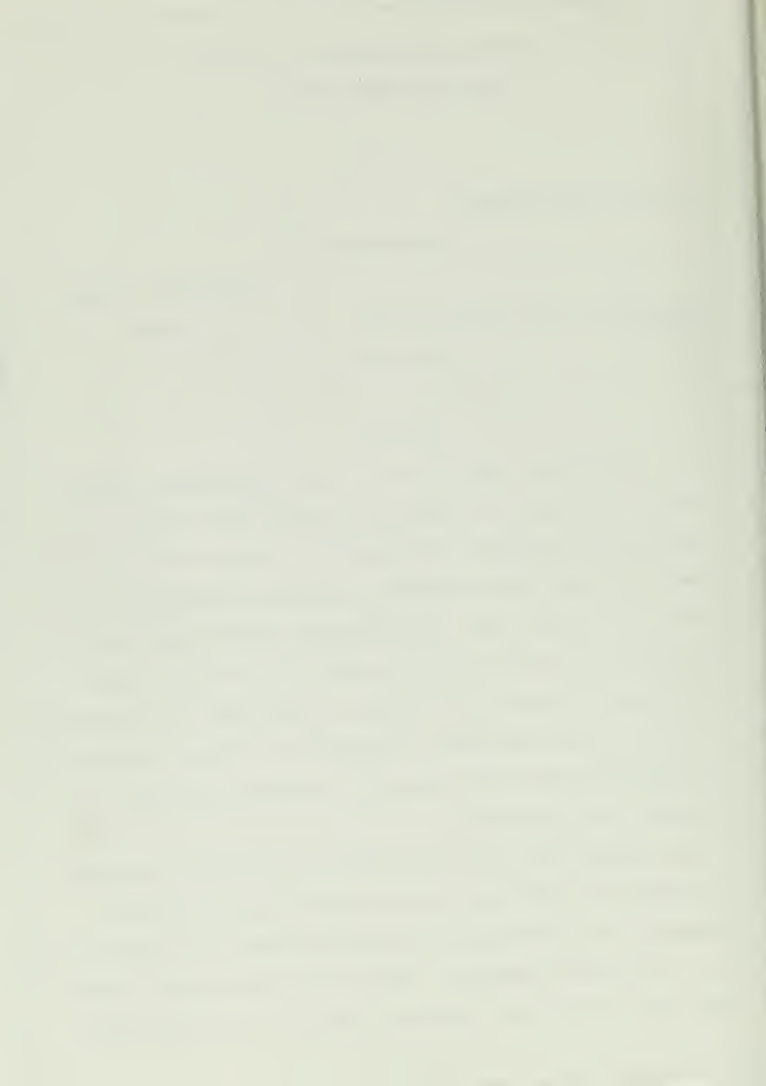
BRIEF

Respondent. )  
10  
11

ARGUMENT

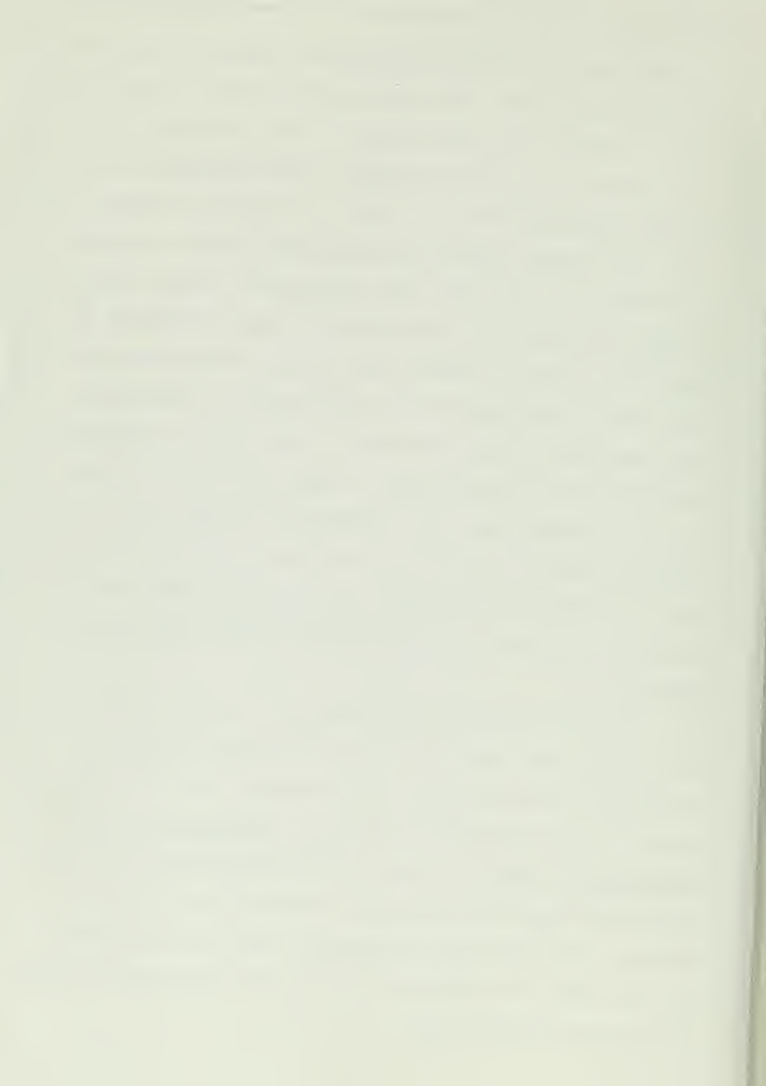
12 Respondent relies heavily upon the apparent contra-  
13 dictory testimony of appellant's mother with respect to  
14 the alleged birthplace of appellant's father and the  
15 assertion that the terminology employed in appellant's  
16 birth certificate that his father was "from" San Diego,  
17 California, is meaningless insofar as it indicates the  
18 birthplace of appellant's father. That there is an apparent  
19 conflict in the testimony of appellant's mother the more  
20 points up the fact that there is a genuine issue of  
21 material fact presented.

22 Exhibit No. 4 (Tr. pp.148-149) sets forth the sworn  
23 statement of appellant's mother made in Mexico City on  
24 December 29, 1953 before E. DeWITT MARSHALL, an investigator  
25 for the American Embassy. Therein she purportedly stated  
26 that she had seen her husband's Mexican birth certificate,



1 but that the only proof of his Mexican nationality was her  
2 marriage certificate. No record of the birth of appellant's  
3 father in Mexico City (as alleged in the marriage certifi-  
4 cate, Exhibit 7 at pages 154-158 of the transcript) could  
5 be found (Exhibit 9, Tr., p. 161). As early as January 11,  
6 1954, the officer before whom appellant's mother appeared  
7 on December 29, 1953 felt that there was a factual issue  
8 in need of resolution, with respect to the birthplace of  
9 appellant's father, because said officer interpreted the  
10 language in appellant's birth certificate as indicating  
11 that appellant's father was born in San Diego, California.  
12 (Exhibit 6, Tr., pp. 151-152). There is nothing in the  
13 record to suggest that Mr. MARSHALL was engaged in  
14 frivolity when he sought clarification of the matter,  
15 nor does the record indicate that the matter was ever  
16 cleared up by proof that appellant's father was born in  
17 Mexico.

18 The representation by appellant's father at the time  
19 of his marriage that he was born in Mexico City may be  
20 construed as self-serving, in accordance with the views  
21 expressed by the Seventh Circuit in Rassano vs. I.N.S.  
22 377 F.2d 971 (1967), in that such representation may well  
23 have facilitated his marriage in Mexico to a native of  
24 Mexico. The testimony in Rassano, supra, was rejected  
25 not for lack of credibility but for the reason that it was  
26 found to be self-serving.



1 In contrast, it is a strained construction of the  
2 term "self-serving" to argue that appellant's father  
3 sought to achieve some advantage to himself at the time he  
4 registered appellant's birth with the Mexican authorities  
5 on July 7, 1930 (Exhibit 3, Tr., pp. 144-147).

6 It must be conceded that the documentary evidence  
7 in support of appellant's claim to United States citizen-  
8 ship in that his father was born in San Diego, California,  
9 is not as complete as might be desired. Nevertheless,  
10 the testimony of appellant's mother, taken in its entirety,  
11 the thirty-eight year old record of appellant's birth,  
12 and the thirty-nine year old photograph depicting  
13 appellant's father in what appears to be a United States  
14 Naval uniform and bearing a dateline in the United States  
15 (Exhibit 5, Tr., p. 150 and Tr., p. 97, lines 2-25), can  
16 hardly be dismissed as insignificant and insufficient to  
17 raise a genuine issue of fact with respect to the birth-  
18 place of appellant's father. Respondent seems to contend  
19 that there is not sufficient evidence because the testimony  
20 of appellant's mother is lacking in credibility. As the  
21 Second Circuit stated in Pignatello vs. Attorney General,  
22 350 F.2d 719 (1965), at page 723: "Petitioner's claim  
23 of citizenship involves delicate issues of credibility  
24 that could only be resolved with the benefit of live  
25 testimony and a more complete documentary record."  
26 (Emphasis added).



## CONCLUSION

Appellant respectfully requests the Court to transfer these proceedings to the District Court for hearing de novo of his nationality claim.

Dated: July 25, 1968.

Respectfully submitted,

GRIFFIN & GRIFFIN, by:

*Richard T. Griffin*  
Attorneys for Appellant

STATE OF CALIFORNIA )  
 ) ss  
COUNTY OF LOS ANGELES )

I, Ann Huglin, being duly sworn depose and say:

I am a citizen of the United States, and a resident of the County aforesaid; I am over the age of 18 years and not a party to the within entitled action; my business address is 301 E. Colorado Boulevard, Pasadena, California, 91101. On July 25, 1968 I served the within Appellant's Reply Brief on the Respondent in said action, by placing 3 true copies thereof in a sealed envelope with postage thereon fully prepaid, in the United States mail at Pasadena, California, addressed as follows:

United States Attorney  
312 North Spring Street  
Los Angeles, California 90012

Attention: Mrs. Caroline M. Reynolds

*Ann Huglin*

Subscribed and sworn to before  
me this 25th day of July, 1968.

*Richard T. Griffin*

Notary Public in and for  
said County and State



OFFICIAL SEAL  
RICHARD T. GRIFFIN  
NOTARY PUBLIC - CALIFORNIA  
PRINCIPAL OFFICE IN  
LOS ANGELES COUNTY

